Supreme Court, U.S.
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NO. 86-565

In The
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

JOHN R. MANSON, COMMISSIONER,
CONNECTICUT DEPARTMENT OF CORRECTIONS,
Petitioner,

v.

MICHAEL ALSTON,
Respondent.

JOHN R. MANSON, COMMISSIONER,
CONNECTICUT DEPARTMENT OF CORRECTIONS,
Petitioner,

v.

JAMES HASKINS,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

After exhausting their state remedies after conviction in a joint state criminal trial, respondents brought consolidated habeas corpus actions in United States District Court challenging, among other things, the method of jury selection at their trial. Their principal challenge, and the only one addressed by the courts below, was to a feature of the Connecticut jury selection process which has since been repealed, Public Act 82-307 (1982). The former Conn. Gen. Stats. Section 51-220 established a system for selection of members of the annual jury array for each county under which by law the largest cities provided a smaller fraction of their population for jury service than did the smaller towns.

Because in New Haven County, as in the other counties in Connecticut, virtually the entire Black population of the county resides in the underrepresented large cities, the inevitable result of this town quota system was to underrepresent Black citizens on the jury array.

The District Court found that this underrepresentation existed and was at least prima facie evidence of an intentional underrepresentation of Blacks on the jury array. Because the state never proffered any defense of the town quota system, resting its case entirely on a criticism of respondent's statistics, the District Court found respondents' discrimination case unrebutted and accordingly held that the town quota system deprived them of the equal protection of the laws.

On appeal, the United States Court of Appeals for the Second Circuit affirmed, one judge dissenting. The Court of Appeals approved the findings of the trial judge that the underrepresentation of Blacks was an inevitable feature of a jury selection system which underrepresented the communities where almost all Blacks lived and agreed that absent any proffer of a justification for this scheme of underrepresentation, respondents were entitled to prevail. Dissenting, Judge Miner would have "at least remand[ed] to the district court for further findings...." Pet. for Cert. App. at 3571. In his view the evidence did not exclude the possibility that underrepresentation of the communities where most Blacks reside might be counterbalanced by relative overrepresentation of Blacks among those

eligible for jury service compared to their representation in the population as a whole in the other communities. Additionally, Judge Miner thought the use of statistical techniques to analyze jury underrepresentation inappropriate where, as here, the claimed mechanism of exclusion was a statute rather than a subjective process. Pet. for Cert. App. at 3570.

REASONS FOR DENYING THE WRIT

The petition presents essentially a factual question, to which both courts below gave the obviously correct answer. The sole question presented is whether "the operation of Connecticut's former statutory jury quota system brought about underrepresentation of potential Black jurors." Pet. for Cert. i. Both courts

below concluded based upon the uncontroverted evidence presented that the answer to that question is "yes." This conclusion does not depend on advanced analytic tools. It is simply common sense that if almost all the Black residents of New Haven county lived in the largest cities, and the residents of these cities were underrepresented on the jury array, then as a result Blacks would be underrepresented on the array.

The evidence before the district court quantified the extent of the underrepresentation created by the town quota system. Using the percentage of Blacks in the population of each town in New Haven County, and the extent of under- or overrepresentation of that town on the array, the district court found the amount of underrepresentation of Blacks to be

expected in the array considering the scope of the underrepresentation of the communities where they resided. The district court found that instead of approximately 501 Blacks in an array representative of the adult population of New Haven County, an array which was fully representative of the Black population of each city and town in the county but in which the cities in which Blacks chiefly resided were underrepresented as mandated by statute, the number of Blacks would be expected to be 368. Supp. Pet. for Cert. App. 3.

The only use of the tools of statistical decision theory by the courts below was their mathematical confirmation that the difference between 368 and 501 expected jurors was larger than the differences which might be expected to

arise by chance absent systematic factors causing underrepresentation. Thus the courts below addressed and properly answered a rather easy factual question: underrepresentation of communities where Blacks reside may reasonably be found to imply underrepresentation of the Blacks who reside in those communities. To be sure, the courts below went on to draw the legal conclusion that this underrepresentation was probative of a discriminatory intent, applying the standards of Castaneda v. Partida, 430 U.S. 482 (1977), but this conclusion is not at issue in this case. The petition for certiorari does not raise any question regarding the propriety of an inference of discrimination from a showing of underrepresentation. It challenges only the sufficiency of the showing of underrepresentation itself. Because the

existence of this showing is a factual question properly resolved by the courts below, and because the resolution of this factual question raises no important questions for this Court, the petition should be denied.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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